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Shorelines Hearings Board

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ACCEPTANCE OF SERVICE

BEFORE THE SHORELINES HEARINGS BOARD

STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
KING COUNTY TO CONDOMINIUM)
BUILDERS, INC.,)

JUANITA CONDOMINIUM HOMEOWNER'S)
ASSOCIATION and CITY OF KIRKLAND,)

Appellants,)

v.)

KING COUNTY and CONDOMINIUM)
BUILDERS, INC.,)

Respondents,)

STATE OF WASHINGTON, DEPARTMENT)
OF ECOLOGY and SLADE GORTON,)
ATTORNEY GENERAL,)

Intervenors.)

SHB NOS. 78-20 and 78-22

FINAL

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a substantial development permit by King County to Condominium Builders, Inc., came before the Shorelines Hearings Board, Robert E. Beaty, William A. Johnson, Rodney G. Proctor and David A. Akana (presiding), at a hearing in Bellevue, Washington on October 12 and 13, 1978.

Appellant Juanita Condominium Homeowner's Association was represented by Robert M. Hill and Robert F. Burnett; appellant City of Kirkland was represented by its attorney, Ralph I. Thomas;

1 intervenors Department of Ecology and Attorney General were represented
2 by Laura E. Eckert, Assistant Attorney General; respondent King County
3 was represented by Thomas A. Goeltz, Deputy Prosecuting Attorney;
4 respondent-permittee was represented by its attorney Peter L. Buck.

5 The Shorelines Hearings Board issued a Proposed Order on November 28,
6 1978, and the parties subsequently filed numerous exceptions to the order
7 and numerous replies to the exceptions. Subsequently, the parties
8 attempted to settle this case by arriving at a compromise. All of the
9 parties except the City of Kirkland were able to agree to the general
10 terms of a settlement ending the dispute which included a change in the
11 plan. Failing to satisfy the City of Kirkland, appellant Juanita
12 Condominium Homeowner's Association, respondent King County, respondent
13 Condominium Builders, Inc., intervenor State of Washington Department of
14 Ecology and intervenor Slade Gorton submitted a substitute Order, although
15 the parties do not necessarily agree with all findings and conclusions
16 contained herein.

17 Having heard or read the testimony, having examined the exhibits,
18 having issued a Proposed Order and having received exceptions and replies
19 thereto; and all parties except the City of Kirkland having jointly
20 submitted a substitute Order to the Board, and the Shorelines Hearings
21 Board having adopted that substitute order the Board now makes these

22 FINDINGS OF FACT

23 I

24 The proposed substantial development is the construction of a

25
26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

2 (amended)

1 four-story 48-unit condominium building, accessory parking, and
2 swimming pool on a 5.15-acre site (three acres covered by water)
3 adjacent to Juanita Bay, Lake Washington, in King County. The
4 proposed building is 310 feet long by 74 feet wide and 43.5 feet
5 high, and is situated parallel to the shoreline. Access to the site
6 from Juanita Drive Northeast, lying to the north of the site, is
7 provided along a 40-foot wide by approximately 200-foot long road at
8 the northwest corner of the site. The site is relatively flat from
9 the water line to Juanita Drive Northeast, a distance of about 450
10 feet. The site is zoned for high-density multiple family dwelling
11 (RM-1800P). The property surrounding the site is zoned for business
12 or for similar high-density multiple family dwelling use.

13 A 40-acre public park with 1,000 feet of waterfront is located
14 about 200 feet to the northwest of the site. The park, which is
15 fenced on all landward points, provides public access to the
16 shoreline during daylight hours.

17 North of the park, a county road, 93rd Street, terminates at
18 the water's edge. This road can be used for launching watercraft if
19 it is developed for such purpose.

20 II.

21 The King County Shoreline Master Program (SMP) locates the site
22 in an urban environment designation.

23 III.

24 A provision of the SMP pertinent to these appeals is the
25 following:

26 FINDINGS OF FACT
27 CONCLUSIONS OF LAW
AND ORDER

1 Multi-family residential developments and
2 structures shall not exceed thirty feet above
3 average lot grade unless it can be shown that
4 a higher structure will not interfere with
5 visual access of the water.

6 Regulation B(2), Residential Development Section, p. 97 of the SMP.

7 The proposed 43.5-foot high condominium would obstruct some
8 views of Lake Washington from some commercial properties located
9 north and east of the site, and along Juanita Drive Northeast,
10 and would continue to obstruct these views even if the proposed
11 condominium were reduced in height to 30 feet.

12 Property on a hill 1,000 feet to the north and east of the site
13 upon which a number of condominium units have been built, would
14 include the proposed condominium in its territorial views. Views
15 from these condominium residences look southwesterly and westerly.
16 Condominium Builders, Inc.'s (CBI) condominium, located in a
17 southerly direction from such residences, would not significantly
18 interfere with views from such residences. Views from the yards of
19 properties upon which such condominium residences are located would
20 be slightly impaired at at least two locations. Views from pro-
21 perties located in other directions from the CBI site were also not
22 shown to be interfered with by the proposed substantial development.

23 The CBI condominium, as proposed, will not obstruct the view of
24 a substantial number of residences on areas adjoining the site or
25 interfere with visual access to the water in anything but a de minimis
26 manner.

27 FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

Reduction in height to 35 feet as proposed by the parties other than Kirkland is desired by the citizens in the area and the Department of Ecology and is a beneficial modification of the project even if not required by the facts of this case.

IV.

The SMP states as a policy that public access in new shoreline developments through public pedestrian easement should be considered in:

. . .

c. Areas presently being legally used or historically having been legally used by the public along the shoreline for access.

Public Access Element, Policy 5(2)(c), p. 17 of the SMP.

The site has been used by the public for many years to gain access to the water, including launching of small boats. Such access has since been eliminated by the temporary fencing of the property.

Physical access over the site is not provided by the terms of the permit as issued, except to condominium residents and guests. The order proposed by the parties other than Kirkland does provide for additional public access, however, and the public will be benefitted by it.

The SMP provides that:

OBJECTIVES

6. Shorelines of the state should be available to all people for sensory gratification.

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

1 Policy 1 - Viewpoints, lookouts and vistas
2 of shorelines of state and wetlands should
be publicly accessible.

3 Policy 2 - New developments should minimize
4 visual and physical obstruction of the water
from shoreline and roads and upland owners.

5 Public Access, p. 18 of the SMP.

6 Policy 4(3) - Shoreline structures should be
7 sited and designed to minimize view obstruc-
8 tion and should be visually compatible with
the shoreline character.

9 Conservation Element, p. 20 of the SMP.

10 The permit as modified will make a viewpoint, lookout or vista
11 of the shoreline accessible to the public.

12 Policy 6(2) and Policy 4(3) encourage minimizing visual ob-
13 struction of the water. With respect to residences on the hill, the
14 structure as originally proposed would only minimally obstruct
15 views. With respect to view from shoreline roads, Juanita Drive
16 Southeast is some 450 feet from the shoreline behind several com-
17 mercial buildings. Any attempt to limit view obstruction could be
18 compromised by subsequent development between the project and
19 Juanita Drive.

20 Policy 4(3) encourages shoreline structures to be visually
21 compatible with the shoreline character. The proposed condominium
22 is generally consistent with the shoreline character, particularly
23 since it is immediately adjacent to a condominium and to commercial
24 development.

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26 FINDINGS OF FACT
27 CONCLUSIONS OF LAW
AND ORDER

VI.

The developer has agreed to modify the proposed project by moving the swimming pool from the Lake Washington side of the project to the upland side.

VII.

The County considered each concern raised by the interested citizens.

VIII.

The Lake Washington Regional Goals and Policies (LWRGP) study recommends that public access to and along the water's edge be provided by new developments, that public pedestrian and bicycle pathways be developed close to the water's edge where such areas are available, and that views from the shoreline and upland be preserved and enhanced. (Paragraphs 3, 6, and 7, p. 13 of the LWRGP.) Such public access should also be "consistent with the public safety [and] private property rights." (Paragraph 1, p. 13 of the LWRGP.)

High rise structures (over 35 feet above average grade level) are discouraged, but are permitted where there would be no substantial view obstruction and some overriding public interest would be served. (Paragraph 4, p. 23 of the LWRGP.)

IX.

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

1 CONCLUSIONS OF LAW

2 I.

3 In reviewing this substantial development permit, the Board
4 evaluates the consistency of the proposed project with the approved
5 King County Shorelines Master Program and the provisions of RCW
6 90.58. It does not use the Lake Washington Regional Goals and
7 Policies as a standard.

8 II.

9 There are two major issues in this matter: (1) The height of
10 the building and possible view obstruction, and (2) Public access to
11 the shoreline.

12 As to height, RCW 90.58.320 prohibits permits for structures in
13 excess of 35 feet above average grade level "that will obstruct the
14 view of a substantial number of residences on areas adjoining such
15 shorelines except where a master program does not prohibit the same
16 and then only when overriding considerations of the public interest
17 will be served." We have found that the view of a substantial
18 number of residences will not be obstructed by the CBI condominium.
19 Additionally, the SMP allows structures exceeding 30 feet in height
20 as previously discussed.

21 III.

22 RCW 90.58.020 states a policy which prefers uses which are
23 unique to or dependent upon use of the state's shorelines. Where a
24 development is not dependent for its location upon the shoreline, it
25 may yet be located thereon if some corresponding public benefit is

26 FINDINGS OF FACT
27 CONCLUSIONS OF LAW
AND ORDER

1 provided. See Smith v. City of Seattle, SHB No. 158; Coughlin v.
2 City of Seattle, SHB No. 77-18; Skagit River League v. Skagit County,
3 SHB No. 228. The provision for public access upon the shorelines of
4 the state is such a corresponding benefit. RCW 90.58.020 encourages
5 developments and improvements which facilitate public access to the
6 shorelines of which will provide an opportunity for substantial
7 numbers of people to enjoy the shorelines of the state. Public
8 access to the shoreline across the upland is desirable for this
9 property as previously discussed. The public access as called for
10 herein is consistent with the policy of the Shoreline Management Act.

11 IV.

12 The proposed substantial development has not been shown to be
13 inconsistent with the cited provisions of the King County Shoreline
14 Master Program, except as noted.

15 V.

16 Except as indicated in Conclusions of Law III, the proposed
17 substantial development has not been shown to be inconsistent with
18 provisions of RCW 90.58.

19 VI.

20 Consistency with every applicable provision of a shoreline
21 master program is required by RCW 90.58.140(2)(b). Generally,
22 goals, objectives and policies only provide very broad guidelines
23 and are non-mandatory in nature. Thus, a project which does not
24 fully meet the terms of a non-mandatory policy is not, for that
25 reason alone, inconsistent with the shoreline master program.

26 FINDINGS OF FACT
27 CONCLUSIONS OF LAW
AND ORDER

1 However, the goals, objectives and policies must be read and applied
2 together in a manner so as to ensure the policy of the program or
3 act is not thwarted.

4 VII.

5 Respondent CBI requests that we apply to the facts of this case
6 recently adopted changes to the SMP which deleted reference to the
7 30-foot height limitation (see Finding of Fact III). On May 2,
8 1978, the County amended its SMP; the instant permit was issued on
9 June 14, 1978; on June 30, 1978, the Department of Ecology (DOE)
10 approved the adopted changes by letter. We take notice that DOE has
11 not yet adopted its ruling in chapter 173-19 WAC pursuant to chapter
12 34.04 RCW. The changes are therefore not yet effective.
13 See Harvey v. County Commissioners, 90 Wn.2d 473 (1978). Thus, it
14 is premature to use the approved changes prior to their formal
15 adoption, however likely it appears that the approved change will
16 become law.

17 VIII.

18 Any Finding of Fact which should be deemed a Conclusion of Law
19 is hereby adopted as such.

20 From these Conclusions, the Board enters this:

21 ORDER

22 The substantial development permit granted to Condominium
23 Builders, Inc., by King County is remanded to King County for
24 reissuance with conditions that:

25
26 FINDINGS OF FACT
27 CONCLUSIONS OF LAW
AND ORDER

1. The height of the building shall be no more than thirty-five (35) feet; a double deck parking garage shall be allowed in the vicinity of the proposed carport.
2. The proposed building shall remain the width approved by King County, but shall be moved as far to the east as the zoning code sideyard requirement permit, and location of the ramp to the garage shall also be located as far to the east as possible.
3. Public access shall be provided in the form of a paved pedestrian walkway at least four feet in width, designated as a pedestrian walkway, from Juanita Drive to the shoreline and then along the shoreline across the entire length of the property. A picnic table and benches shall be provided on the shorelines adjacent to the paved path. These areas shall be available to the general public during daylight hours. The public may use such areas for passive recreation and hand launching of boats.
4. The swimming pool will be placed at least 50 feet from the water's edge, or will be relocated on the upland side of the proposed project.
5. All relocated structures shall comply with applicable King County zoning and building codes.

DATED this 6th day of April, 1979.

SHORELINES HEARINGS BOARD

W. Johnson

Robert E. Baly

David Allen

Rodney L. Proctor

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER